No. 3780

In the United States Circuit Court of Appeals

For the Ninth Circuit

3

SARAH POOL,

Appellant,

vs.

JAMES A. WALSH, Collector of Internal Revenue of Montana,

Appellee.

Brief of Appellee

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA

Appearances:

JOHN L. SLATTERY, United States Attorney
RONALD HIGGINS, Assistant U. S. Attorney,
W. H. MEIGS, Assistant U. S. Attorney,
Attorneys for Appellee.

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FOREWORD

The office of a statement of the case is to succinctly present the questions involved, in the manner in which they are raised.

(Rule 24 of this Court.)

Appellant violates the rule by injecting into her statement of the case a recital of alleged facts, (Pp. 4 and 5, Appellant's Brief) which present no possible question within the record; such recital being manifestly intended as a reflection upon the integrity and good faith of

the "federal revenue officers." Such a violation of the plain rule of this court ought to be severely criticized and condemned. Appeals to sympathy, based on statements unsupported by the record, are strangely out of place before a tribunal, whose function, in this case, is to dispose of pure questions of law.

ARGUMENT

In support of the alleged errors assigned, appellant contends for three propositions: One, that Sec. 3224, Revised Statutes of the United States, assumes that a liability for a tax exists, and that the object of the statute is to prevent delay or interference with the collection of the federal revenue, and, hence, does not apply where the provisions of a penal statute are sought to be enforced; second, that a penalty is not subject to collection by distraint; and, third, that there is no evidence sufficient to authorize the Commissioner of Internal Revenue or the Collector of Internal Revenue, to make the assessment sought to be collected herein.

All of these contentions have been disposed of adversely to the appellant by the decision of this court in the case of Regal Drug Company, a Corporation, versus Wardell 273 Fed. 182, decided May 2, 1921. So far as the issues are concerned, that case is identical with the one at bar, and is controlling here.

The appellant's first contention, namely, that Sec. 3224 assumes the existence of a liability for a tax, and is inapplicable where a penalty is sought to be enforced, is thus disposed of in the able opinion of Judge Morrell in Regal Drug Corporation versus Wardell:

"Conceding that the tax is in the nature of a pen-

alty, it does not follow that its collection can be restrained by a suit in equity, if there is a speedy and adequate remedy at law. That there is such a remedy at law can not be seriously controverted."

(Secs. 3220 and 3226, R. S.

And, consequently, the second contention of appellant, namely that a penalty is not subject to collection by distraint, falls.

The third contention of the appellant, namely, that there is no evidence sufficient to authorize the making of the assessment sought to be collected, is untenable.

Sec. 35 of Title II of the National Prohibition Act provides that upon evidence of the illegal manufacture or sale of intoxicating liquor, a tax shall be assessed against, and collected from, the person responsible for such manufacture or sale. The assessment of such tax is purely an administrative function, and whether or not the evidence submitted is sufficient to warrant the assessment of the tax is not subject to review by the court.

Kelly v. Lewellyn, 274 Fed. 108.

The Supreme Court has said, in the State Railroad Tax Cases, 92 U. S. 575, with respect to Sec. 3224, supra:

"The government of the United States has provided, both in the customs and in the internal revenue, a complete system of corrective justice in regard to all taxes imposed by the general government, which in both branches is founded upon the idea of appeals within the executive departments. If the party aggrieved does not obtain satisfaction in this mode, there are provisions for recovering the tax after it has been paid, by suit against the collecting officer. *But there is no place in this system for an*

application to a court of justice until after the money is paid." (*Italics are ours.*)

And, in Snyder vs. Marks, 109 U. S. 189, referring to the inhibition of Sec. 3224, supra, it is said:

"The remedy of a suit to recover back the tax after it is paid, is provided by statute, and a suit to restrain its collection is forbidden. The remedy so given is exclusive, and no other remedy can be substituted for it."

In Dodge vs. Osborn, 240 U. S. 118, plaintiff sought to enjoin the assessment and collection of certain surtaxes, upon the ground that the statute was void, and repugnant to the Constitution of the United States. A motion to dismiss the bill was sustained, and the court, speaking through Chief Justice White, said:

"This doctrine has been repeatedly applied until it is no longer open to question that a suit may not be brought to enjoin the assessment or collection of a tax because of the alleged unconstitutionality of the statute imposing it." (Citing a number of cases.)

Resuming, the cases above cited demonstrate the certainty that the appellant has an adequate remedy at law; and, (2), that even though such remedy be neither adequate nor speedy, yet, in view of the unambiguous terms of Sec. 3224, supra, her suit may not be maintained.

Respectfully submitted

JOHN L. SLATTERY,
United States Attorney.

RONALD HIGGINS,
Assistant U. S. Attorney.

W. H. MEIGS,
Assistant U. S. Attorney.

In the Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

PARKER STENNICK, Trustee in Bankruptcy for the Hamilton Creek Timber Company, a Corporation, and the Rainier Lumber & Shingle Company, a Corporation,

Plaintiff-Appellant,

vs.

WILLARD N. JONES, FRED A. KRIBS and the J. K. Lumber Company, a Corporation,

Defendants-Appellees.

APPELLANTS' BRIEF.

Appeal from the Findings of Honorable Robert S. Bean, Judge of the District Court of the United States for the District of Oregon on Accounting.

THOMAS MANNIX,
GUY L. WALLACE,

Attorneys for Appellant.
GUY C. H. CORLISS,
Attorney for Appellees.

By permission of the Court I cite the following cases on the points that the creditors are entitled to the two items of proeprrty wherein Dodge took money from Jones and Kribs and did not pay the creditors

In re Winter, 8 Ch. Div. 225;
Hunt, vs. Johnson, 11Wed. 135;
Slater, vs. Oriental Mills, 27 Atl. 443.

In the Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

PARKER STENNICK, Trustee in Bankruptcy for the Hamilton Creek Timber Company, a Corporation, and the Rainier Lumber & Shingle Company, a Corporation,

Plaintiff-Appellant,

vs.

WILLARD N. JONES, FRED A. KRIBS and the J. K. Lumber Company, a Corporation,

Defendants-Appellees.

APPELLANTS' BRIEF.

Appeal from the Findings of Honorable Robert S. Bean, Judge of the District Court of the United States for the District of Oregon on Accounting.

Complainant in the following suit assign the following errors, to-wit:

I.

The Court erred in its judgment and decree wherein and whereby the Court ordered, adjudged and decreed that the complainant was entitled only

to the sum of $7167.77 against the J. K. Lumber Company and not against the other defendants.

II.

The Court erred in failing to follow the mandate and opinion of the Circuit Court of Appeals, the said part of said opinion reading as follows:

> *"The J. K. Company was limited in its rights by the contract and could take no property which belonged to the bankrupts except that which was clearly affected by the provisions of the contract, and which we have said is confined to the property included in the contract. * * * * All property, therefore, which was bought by Dodge out of the* $215,000 *was fairly within the terms of the contract and became subject to forfeiture. But other property not purchased out of such fund, and not attached to the realty should rightfully pass to the Trustee.* * * * * *
>
> *"As it would be more practicable that an accounting should be had before the District Court which did not allow in favor of the Trustee any account for the value of any personal property taken by defendants, not bought with any of the* $215,000 *heretofore referred to, we think this case should go back to the District Court, etc."*

III.

The Court erred in failing to abide by the following part of the opinion of the Circuit Court of Appeals:

> *"With respect to personal liability of Jones and Kribs our opinion holds that they being parties to the suit and being sued as joint tort*

feasers, are liable individually for any property which they or either of them may have taken in their individual capacities and that the accounting should be had against them as individuals as well as against the J. K. Company,"

IV.

The Court erred in refusing to allow compensation for the following items of personal property converted by the defendants, Jones and Kribs, in their individual capacities on May 12, 1914, and none of which items were paid for by any part of the $215,000.

Shea Engine on hand May 12, 1914	$ 3704.86
Boomsticks on hand May 12, 1914	4951.58
Steam Pond Saw on hand May 12, 1914	302.48
Iron Utensils, etc. (Stewart Bros.) on hand May 12, 1914	1048.51
Wire Rope (Broderick & Bascom) on hand May 12, 1914	4636.01
Cross Cut Saws (Simonds Mfg. Co.) on hand May 12, 1914	164.18
Steel (Neumeyer & Dimond) on hand May 12, 1914	1312.59
Locomotive Equip., etc. (Hofius Equpi. Co.) on hand May 12, 1914	293.63
2 35-Ton Norton Jacks (Ry. Equip. Co.) on hand May 12, 1914	250.25
Bagley Scraper (Beebe) on hand May 12, 1914	150.00
Yarder Engine (Willamette Iron Co.) on hand May 12, 1914	2600.00
Donkey Engine Supplies (Will. Iron Co.) on hand May 12, 1914	407.91
13 Trucks (Seattle Car & Foundry) on	

hand May 12, 1914	6342.08
Steel Rails unattached and in bulk on hand May 12, 1914	9094.21
Ties not attached and piled up on hand May 12, 1914	1680.00
Lumber on hand May 12, 1914	1287.89
Logs sold by Cox from McRae Land on hand May 12, 1914	820.00
Logs stored in slough on hand May 12, 1914	483.07
Iron Supplies and Utensils (Marshall-Wells)	4095.26
Powder on hand May 12, 1914	937.54
Groceries, Shoes, etc., on hand May 12, 1914	2565.93
Tank Fixtures, Push Car, etc. (Fairbanks-Morse Co.) on hand May 12, 1914	154.75
Oil Burner (Logger Oil Eq. Co.), on hand May 12, 1914	450.00
51 gals. Oil (Rasmussen & Co.), on hand May 12, 1914	25.57
Fuel and Lubricating Oil (Standard Oil Co.) on hand May 12, 1914	179.77
Horse on hand May 12, 1914	75.00
Bridge Iron on hand May 12, 1914	464.13
Bunkhouse movable and unattached, on hand May 12, 1914	1200.00
Flat Car on hand May 12, 1914	985.00
Ballast Car on hand May 12, 1914	487.15
Track-laying Car on hand May 12, 1914	133.59
Office Fixtures on hand May 12, 1914	300.00
Total	$51583.74

V.

The Court erred in failing to allow the motion of the complainant that this case should be submitted to a master for the reason that the books of account show the disposition of the $215,000, no part of which was used for the purchase of any of the items set forth in the above assignment of error. The complainant proved his case by showing that the aforesaid items of personal property had not been paid for at all, and the evidence of this fact consisted of the approved claims for the said property, which claims were obtained from the bankruptcy court; the approved claims being uncontradicted evidence that no part of the $215,000 had paid for any of the aforesaid property, and the books of account which were not gone into by the Court show that the $215,000 was used in constructing the railroad bed and completing the railroad. The disposition of the $215,000 is shown by the requisitions of the Chicago bond house in evidence.

VI.

The Court erred in finding that no personal liability attached to Jones and Kribs for taking any part of the aforesaid property, especially in view of the fact that it was admitted at the trial that the J. K. Lumber Company is now a defunct concern and has no assets.

1. This case was sent back from the Circuit Court of Appeals for an accounting. The account-

ing was had before Judge Robert S. Bean. The Court was asked to appoint a master to conduct the hearing, but this was refused. The Court awarded the plaintiff the sum of $7167.77 against the J. K. Lumber Company, but exonerated Jones and Kribs individually from all liability. The matter of the personal liability of Jones and Kribs was the subject of a rehearing before the Honorable Circuit Court of Appeals and the decision handed down in connection with this individual liability of Jones and Kribs reads as follows:

> *"With respect to personal liability of Jones and Kribs our opinion holds that they being parties to the suit and being sued as joint tort feasors, are liable individually for any property which they, or either of them, may have taken in their individual capacities, and that the accounting should be had against them as individuals as well as against the J. K. Company."*

The testimony about Jones' and Kribs' liability is as follows:

Hugh L. Cox testified on page 108 that he went on the ground on or about the 12th of May, 1914.

QUESTIONS BY MR. CORLISS:

Q. Did Mr. Jones as an individual, or Mr. Kribs as an individual have anything to do with that contract?

A. Why, they both had something to do with it as the J. K. Lumber Company.

Q. I mean were they parties to it personally or only as officers of the J. K. Lumber Company?

A. Well, it was signed by Mr. Jones and Mr. Kribs as the J. K. Lumber Company, as I remember the contract. I did, of course, all my business with Mr. Jones and Mr. Kribs, and of course they called themselves the J. K. Lumber Company, but whatever that company consisted of anybody else besides them or not, I don't know anything about it.

On cross-examination on page 120 Cox testified that he went up there on the 12th of May, 1914; that he had charge of everything there for a year and a half; that he talked with Jones and Kribs personally before going up there.

Q. And they directed you to go up there, didn't they?

A. Yes.

Q. And whatever you did up there you did pursuant to a talk you had with Mr. Jones and Mr. Kribs personally?

A. Well, done in pursuance to a contract signed with them.

Q. Well, whatever you did up there, I say, you did pursuant to your talk with Jones and Kribs?

A. And their contract.

Q. And they instructed you to take charge of it?

A. Well, they turned it over to me. * * * * * *

Q. The point I make, Mr. Cox, is that all your talks and all your going up there was due to your talks with Jones and Kribs individually?

A. Yes.

Q. And they directed you to go up there and take possession from Mr. Babcock?

A. Yes, they were to turn the stuff over to us; we were not to have any scrap with Mr. Babcock at all; they were to turn it over.

Q. They told you that Mr. Babcock would turn it over peacefully?

A. Yes.

Q. That is Jones and Kribs?

A. Yes, and Mr.—I don't know—this lawyer, Nash is it? He also told us that Mr. Babcock had instructions to turn it over peacefully, and all we had to do was to go up there and take it over. He was Mr. Dodge's lawyer.

Q. Then you went up there and took it over pursuant to your talk with Jones and Kribs?

A. Yes.

Q. They directed you to do it?

A. Yes.

Again on page 120 Cox testified:

Q. Apart from Jones and Kribs you had no dealing with the J. K. Lumber Company, did you? * * *

A. That is all I came in contact with.

Jones and Kribs were directors of the J. K. Lumber Company. Kribs was president and Jones was treasurer. On page 158 Jones testified as follows:

Q. And it was understood by you and Kribs that they (Cox and Armstrong) were going to go up there?

A. Yes.

Q. And take all the stuff up there? A. Yes.

Q. And that was the undertsanding between you?

A. That was the contract and understanding.

On page 139 Jones testified that at the time the property was taken over he knew that creditors had claims against the property but he had no way of making investigation to find out what these claims were.

On page 2672 of the original testimony Mr. Jones on cross-examination said:

Q. You have all of them (the property) in your possession at the present time?

A. At the present time we have possession of all of that property. We had to take it over because we were facing a condition in which it was absolutely necessary for us to take it over, and we are willing to return it

On page 176 of the Record Judge Corliss, who was attorney for Jones and Kribs, admitted that he drew the notice of forfeiture which is part of the pleadings in this case and under which all the property is claimed to be owned under the forfeiture clauses of the contract.

At the trial of this case in January, 1918, Mr. Jones on his cross-examination testified as follows:

"I am the treasurer of the J. K. Lumber Company. Kribs has been the president of it. It was organized for the purpose of carrying out this contract. We have control of it between us. We own the whole thing."

Q. And when the property was taken over the

12th of May, who was it determined it should be taken over? Was it you or Mr. Kribs, or both of you together?

A. Well, there was discussion as to what action should be taken, and between us we determined that that was the action to be taken.

And in the examination of Cox in January, 1918, the following testimony was given (page 403, et seq.):

Q. At the instigation of Jones and Kribs you made a contract with them, did you not?

A. Yes, sir. They sent their own man up there, Mr. Lilly, and made an inventory of the stuff and we had a right to use anything that they had taken over in connection with our contract. We took possession of everything they gave us possession of and Jones and Kribs have had possession ever since. I have been in their employ since March, 1915. I am superintendent of their logging operations up there. They pay me $250.00 a month. I am cutting the timber up in Hamilton Creek. *Jones and Kribs are selling the logs.*

The foregoing testimony shows that Jones and Kribs owned and controlled the J. K. Lumber Company and that they took all this property over under claim of ownership. The claim now that Jones and Kribs are not individually liable is mere subterfuge to escape liability. The J. K. Lumber Company has gone out of existence and is completely bankrupt and naturally Jones and Kribs are very indifferent as to any judgment that may be declared against the

J. K. Lumber Company, and if they can evade liability by claiming that their corporation and not they themselves converted this property they will have achieved a victory because any judgment against the J. K. Lumber Company would be uncollectible.

The law is well-settled that joint tort feasors cannot escape liability because one of them happens to be a corporation. Anyone who participates in a tort is liable for the tort and it is absurd for one committing the tort to say he did not commit it, but the corporation did. If that proposition were true, every tort feasor in the world could escape liability by incorporating himself as Jones and Kribs did in this case. Just how Jones and Kribs propose to evade their responsibility for the conversion of the property by putting the blame on the J. K. Lumber Company is difficult to understand. Jones and Kribs owned the J. K. Lumber Company; they managed the J. K. Lumber Company and the J. K. Lumber Company could function in no way except through Jones and Kribs. When it was determined to take over all the property of the bankrupts, in whose mind did the scheme originate and whose mouth gave the direction? Everything that was done was done by Jones and Kribs so far as the conversion of this property is concerned and they cannot escape liability now by saying they did it for the J. K. Lumber Company. It does not matter for whom the conversion was made, the perpetrators of the conversion are liable.

A conversion constitutes a trespass, and Jones and Kribs became trespassers by converting this property and they cannot escape liability for their trespass by trying to put the blame on their defunct and bankrupt corporation. The cases are unanimous in holding that the officers and agents of a corporation are liable for torts in which they directly participate.

Jones and Kribs took the property in their "individual capacities" when they directed Cox & Armstrong to go upon the ground and take possession. It did not make any difference whether by taking this property Jones and Kribs intended to benefit the corporation or intended to benefit themselves. The tort attached and the liability was created by the taking and not by the intention. Of course, Jones and Kribs intended to benefit themselves because the corporation was their own and merely an instrument for the carrying on of their business. We do not know of any rule of law which allows the commission of a tort for the benefit of somebody else.

Circuit Judge Hunt, the writer of the opinion in this case in the Circuit Court of Appeals, at one time held the directors of a corporation liable for an explosion of gunpowder unlawfully stored by the corporation though they had no knowledge thereof, if by the exercise of ordinary care and diligence they could have known of the dangers attendant upon the storage of such explosives.

See Cameron v. Kenyon-Connell Com. Co., 22 Mont. 352 and note.
74 Am. St. Rep. 602.

In Nunnelly v. Southern Iron Co., 94 Tenn. 397; 28 L. R. A., at page 429, the Court said:

"When a person enters into a contract with a corporation, through its agents or officers, fairly and in good faith, there can, under no circumstances, any liability attach to such agents or officers in respect to the contract, unless so stipulated. In such a case the person gets just what he bargained for—a liability against or a contract with a corporation alone. But the torts or wrongs of corporations through its agents or officers are governed by an entirely different principle of law. If the agent of a corporation or of an individual commits a tort, the agent is clearly liable for the same; and it matters not what liability may attach to the principal for the tort, the agent must respond in damages if called upon to do so. This principle is absolutely without exception and is founded upon the soundest legal analogies, and the wisest public policy. It is sanctioned by both reason and justice, and commends itself to every enlightened conscience. To permit an agent of a corporation, in carrying on its business, to inflict wrong and injuries upon others and then shield himself from liability behind its vicarious character, would often both sanction and encourage the perpetration of flagrant and wanton injuries by agents of insolvent and irresponsible corporations. It would serve to stimulate the zeal of responsible and solvent agents of irresponsible and insolvent

corporations in their efforts to repair the shattered fortunes of their failing principals upon the ruins of the rights of others. Says Mr. Morawetz: "The agents of a corporation are clearly liable for their tortious acts. They are therefore liable for any injury to the property of others.....and the liability is entirely independent of any liability which the company may have incurred."

See also Nat. Carbrake & Shoe Co. v. Terre Haute Car and Mfg. Co., 19 Fed. 514.
Morrison v. Blue Star Nav. Co., 67 Pac. 244.
Greenburg v .Whitcomb Lbr. Co., 90 Wis. 225; 48 Am. St. Rep. 911 and note.
Tyler v. Savage, 143 U. S. 79; 36 L. Ed. 82.
Bingham v. Lipman, Wolfe & Co., 40 Ore. 363.
Solomon v. Bates, 118 N. C. 311; 24 S. E. 478.
Ullman v. Hannibal, etc., Ry. Co., 67 Mo. 178.
Rem. on Bank, 2nd Ed., Sec. 1225.
In-re Burkowitz, 173 Fed. 1012.
York v. Brewster, 174 Fed. 566.
In-re Holbrook Leather Co., 165 Fed. 973.
Peters v. Union Biscuit Co., 120 Fed. 679 at 686.
Estes v. Worthington, 30 Fed. 465.
Savelhmer v. Eisner, 140 Fed. 938.
In-re Rieger, 157 Fed. 609.
Salt Lake, etc., v. Collins, 167 Fed. 91.
38 Cyc. 483.

In Rauch v. Brunswig, 137 S. W. 67, the Court said:

In speaking of the manager of the corporation the evidence shows that notwithstanding he

did not handle the fund in person in the first place, yet when it was deposited it was under his exclusive control, as he was the sole manager of the corporation. He knew that the money did not belong to his corporation but notwithstanding such knowledge he applied it to the payment of its debts. This was an act of conversion. But we are met with the argument that he was acting in the capacity of agent and not personally liable; therefore he was not guilty of conversion. If such is the law, the agent of a corporation could shield himself from liability from almost every kind of wrong, provided he was acting in the capacity of agent, notwithstanding the circumstances would render the principal liable for the tort. It is held that the agent is liable to a third party for misfeasance and for acts of postitive wrong. * * * *It is immaterial whether the appellant was acting as agent or not, the conversion was a tort and he rendered himself liable by reason of his tortious act."*

In Lytle Logging & Mercantile Co. v. Humptulips Driving Co., 111 Pac. 774, Judge Rudkin held:

"In an action against a corporation and its president and general manager for trespass in cutting timber from plaintiff's land, an instruction that the president was not individually liable if he acted in good faith as an officer of the corporation and not with the wilful intent to commit a trespass on plaintiff's land, was erroneous under the rule that the master and servant are jointly liable for the torts of the servant."

2. The foregoing property set forth in the assignment of errors was taken over by the defendants on the 12th of May, 1914, and the decision by His Honor Judge Bean was rendered on the 10th of January, 1921, six years later. Judge Bean said in his opinion:

> *"There is no testimony by which the Court can segregate the several items so as to ascertain and determine what ones, if any, were on hand and taken possession of by the defendants in May,* 1914, *or the value thereof."*

We submit that Judge Bean was entirely in error in coming to this conclusion.

H. J. BABCOCK was the manager of the Hamilton Creek Timber Company during the years 1913 and 1914 and had the opportunity to determine what materials had been brought on the ground by the bankrupts. He had been in the lumber business all his life and engaged in the manufacture of lumber and had considerable experience with machinery used in connection with logging timber and had been familiar with such machinery and materials that were on the ground for 15 years and knew the value of such materials (page 2 Transcript). Before Judge Kavanaugh it also appeared that he had been two years in the Scientific School at Yale University and six months in the engineering department at Stanford University (page 1839). This long experience gave him unusual qualities as an expert.

Babcock also knew the value of boomsticks and had been dealing with boomsticks for 12 or 15 years. (Ev., page 7.)

Babcock took an inventory of all the personal property that was owned by the Hamilton Creek Timber Company on the ground on or about the 12th of May, 1914. He made a complete inventory and this enabled him to testify as to all the material on the ground and its value.

On page 31 of Babcock's testimony he testified that he had technical knowledge of the property because he figured out the values himself and spent a good deal of time on the work. He testified that he was familiar with every detail of the inventory.

ARTHUR L. LENDHOLM testified that he was the cashier and accountant and checked materials used at Hamilton Creek. When the goods came in he took the bills and checked the material up with the bills as to quantity and then ascertained whether the price was a fair price by comparing it with the price book usually made use of in such computations. He checked over all the items. He is an expert in this line of business as appears from his testimony on page 61. He was on the job in the year 1913 and 1914 up until March. He took an inventory of the property (Plaintiff's Exhibit 20) in the latter part of January, 1914 (page 69) and checked the materials on the ground personally and put a value upon them.

Mr. Babcock was also called in connection with Lendholm's inventory made on the 24th of January,

1914, aforesaid, and testified that all the materials mentioned in the said inventory were on the ground on the 12th of May, 1914 (page 80). He further testified on page 83 that all the articles set forth in plaintiff's exhibit 20 were itemized by the invoices introduced in evidence.

Between the time that his inventory was taken on the 26th of January, 1914, and the 12th of May, 1914, nothing was done except shoveling out slides and the shoveling out of the slides did not require any use of materials, except picks and shovels. There were no operations that would destroy or diminish any of the materials from the, 26th of January, 1914, to the 12th of May, 1914, and the nature of the property was such that without use there would be no deterioration in a period of two or three months. Babcock was on the ground all the time (page 85). Operations practically ceased at the time Lendholm left.

In addition, an inventory taken by Lilly, the agent and servant of Jones and Kribs made on or about the 12th of May, 1914, was also introduced in evidence, the said inventory being complainant's exhibit 21. In addition the original invoices of the property sold by Stewart Brothers, Broderick & Bascom, Simonds Manufacturing Company, Neumeyer & Dimond Company, Hofius Equipment Company and other vendors were submitted in evidence. Babcock and Lendholm both testified that these articles were on the ground and unimpaired in value at the time of the conversion and

their evidence is further corroborated by Lilly's inventory, who as already pointed out, was the agent for Jones and Kribs.

Under these circumstances to say that there is no evidence of the conversion of this property or its value on the 12th of May, 1914, amounts to a complete ignoring of the foregoing evidence, and it might be added that the record contains not a shred of evidence contradicting the foregoing evidence of the plaintiff.

To prove that the foregoing property was not purchased with any part of the $215,000 the original record of the disbursements of the $215,000 was submitted in evidence as complainant's exhibit 1. In addition to this copies of vouchers in possession of the Continental & Commercial Trust and Savings Bank were also furnished. So that the entire record of the disbursement of the $215,000 is accounted for, and except in one or two instances none of the property mentioned above was charged against the $215,000. In the one or two instances referred to Dodge collected the money but used it for his own purposes and that will raise the question whether or not such items can be said to have been paid for out of the $215,000. These items will be pointed out in this brief later. The $215,000 was disbursed at different periods during the year 1913 ending with November 1st. So that any of the above property acquired by Dodge after the 1st of November could not have been purchased out of the $215,000.

We will now take up the items which we claim Judge Bean should have allowed:

The following items were all converted by the defendants on the 12th of May, 1914, and were not paid for out of the $215,000.

STEAM ENGINE $3704.86

Sold by the Hofius Equipment Company to the Hamilton Creek Timber Company, total contract price was $11704.86, conditional bill of sale, title remaining in the Hofius Equipment Company until paid. This $3704.86 was paid by the Hamilton Creek Timber Company out of its own funds or the funds of its creditors and was not charged to the $215,000 and no part of the $215,000 was used in the payment of the said $3704.86.

Babcock testified that the Shea engine was on the ground on the 12th of May, 1914, and was taken over by Jones and Kribs. (See Test., page 3.) This engine was purchased on a conditional sale contract (page 5). The Shea engine was in good condition. It was a 60-ton Shea engine. There was no requisition made by Dodge on the $215,000 for the $3704.86 paid on this engine. This amount came out of the bankrupt corporations and this $3704.86 represented the equity in the said engine.

H. L. Cox testified on page 110 that this Shea engine was on the ground. He also testified that Jones and Kribs obtained the use of this engine by making arrangements with the vendors after the conversion.

The rule is well settled that a conditional vendee, even after condition broken, can maintain trover for the conversion of personal property. The bankrupts having possession of this engine and being conditional vendees thereof can recover the value of the equity.

Harrington v. King, 121 Mass. 269 and cases cited in 1917 L. R. A.

In Harrington v. King, supra, it is expressly held that a conditional vendee after condition broken may recover as against a trespasser.

BOOMSTICKS $4951.58

This item consists of 17 sets of boomsticks which amount to 425 sticks and chains at $9.00 each, total, $3825; boat, $600.00; boomhouse on raft, $300.00; swifters, $226.58, making a total of $4951.58. These boomsticks were not paid for out of the $215,000 and were not charged against the same by Dodge and were the property of the Hamilton Creek Timber Company.

These boomsticks were taken over on the 12th of May, 1914. (Ev., page 7.) These boomsticks belonged to the Hamilton Creek Timber Company. They were carried as an asset on the books of the company and were put on the books March 31, 1914. (See Vaughan's Test., page 99.) These boomsticks were all itemized in Babcock's testimony (see pages 7 and 8.

Hugh Cox testified on direct examination, page 11, that these boomsticks were taken over on May 12, 1914.

On page 39 Babcock testified that these boomsticks were practically all new sticks, and these boomsticks having been taken over on the 12th of May, 1914, and the inventory having been taken at that time and Babcock having testified to the reasonable value thereof, the evidence on these boomsticks is conclusive.

These boomsticks were not included in the $215,000 as the requisitions will show. These boomsticks were also set forth in the Lilly inventory (complainant's exhibit 21).

STEAM POND SAW.....$302.48

This was bought of the Multnomah Iron Works on the 26th of January, 1914, and was the property of the Hamilton Creek Timber Company and was not charged to the $215,000 fund, or paid for out of the $215,000 and is an aproved claim in favor of the Multnomah Iron Works.

Babcock testified that this pond saw was taken over on the 12th of May, 1914. The bill for this shows that this was not paid for out of the $215,000 (see page 11). Both Lendholm and Babcock testified as to the value of the pond saw. On cross-examination Babcock testified that this pond saw was there when he left on the 12th of May, 1914.

On page 115 Cox testified that this pond saw was shipped back after the conversion by one of the agents for Jones and Kribs, to-wit, Lilly, who made the inventory for Jones and Kribs. Obviously, whatever happened after the property was converted

would not be an excuse for the conversion. With the pond saw, and taken over at the same time, was a six-horsepower boiler and six feet three-quarter copper hose compresser. These items are set forth in Exhibit 2 and were identified both by Lendholm and Babcock.

STEWART BROTHERS ——————— $1048.51

This item consists of hooks, skidding tongs, blocks and other machinery as set forth in the invoices attached to the claim which was filed in the Bankruptcy Court against the Hamilton Creek Timber Company. This was not paid out of the $215,000 or charged against it.

This claim as itemized in the account consists of the following articles:

12 Only 1¼ Choker Sockets.
12 Only 1¼ Peters Choker Hoods.
12 Only 1½ Clevises.
12 Only 1¼ Choker Sockets.
4 Only No. 91 Stewart Trip Blocks Mang. Sheave Line Guard.
2 Only No. 142 Stewart Trip Blocks Mang. Sheave Line Guard.
4 Only No. 1122 Stewart Yarder Blocks Mang. Sheave Line Guard.
1 Reel Wire Rope.
10 Steel Blocks.
6 Only 1¼ Choker Sockets.
2 Only 2¼ Taylor Butt Hooks.
2 Only 1¼ Choker Hoods.
2 Pair 2-in. Octagon Giant Skidding Tongs.
1 Only Trolley.
14x2½x3 Pins.

3 14x2½x3 Manganese Sheaves.
2 Pieces ⅜ Boiler Plate 28x46.
3 3½ Pins.
3 Stewart Oil Cups.
1 2-in. Pin.
2 1¼-in. Pins.
6 Lock Washers.
3 2-in. Full Nuts.
3 2-in. Half Nuts.
1 Box Peerless ⅜-in. H. P. Square Spiral, package 2½ lbs.
1 Box Peerless ½-in. H. P. Square Spiral, package 1⅜ lbs.
1 Box Peerless ⅝-in. H. P. Square Spiral, package 22⅛ lbs.
3 Only 8x2x2½ Mangenese Sheaves.
3 Only Special Pins as per sketch.
4 Only No. 10 Warren Swivels.
12 Only 1½ Clevises made large enough for butt hook 2½-in. to enter tool steel pins furnished.
8 Only 10-in. Stewart Parding Block.
4 doz. 4½ lbs. Stewart Cal. Rev. Axes Sager.
4 doz 36-in. Axe Handles O. H.
2 Only Waterhouse Butt Hooks.
6 Only Hooks for 1¼ Peters Hooks.
4 Only 1/14 Peters Choker Hooks.
3 Only No. 91 Trip Block with Guards.
2 Only No. 1130 Shackle Ydg. Blocks.
8 Only No. 91 Trip Blocks.
2 Only No. 142 Trip Blocks.
1 Only No. 1000 Lead Block.

Babcock testified on page 11 that these items enumerated above were taken over on the 12th of May, 1914, and that the reasonable value of the said

above articles was $1048.51. He also testified that this property was stored in the commissary and had never been used. (Page 12.)

Lendholm testified that he checked all this stuff over prior to February, 1914, except $150.00 worth which came in after February.

BRODERICK & BASCOM—WIRE ROPE..... $4636.01

This company has a claim against the Hamilton Creek Timber Company for items set forth in the inventory, which claim has been approved. This was not charged against the $215,000.

The items of the wire rope are set forth in plaintiff's Exhibit 4 and the sizes and quantities of wire rope sold by this company was stated item by item and the cost of this rope was $4636.01.

Babcock testified on page 12 that his wire rope was taken over on the 12th of May, 1914, and testified that the sum of $4636.01 was a reasonable value of the wire rope taken over at that time.

This item of wire rope is further set forth in Lendholm's inventory (complainant's exhibit 20), where the cable on the donkey engines is designated as old cable and the cable in the commissary is designated as new cable. The total value of this cable is given in Lendholm's inventory as $4752.

There is no denial of the fact that this cable was on the ground and there is no evidence to contradict the evidence of its value.

SIMONDS MANUFACTUR'G CO.—CROSS-CUT SAWS $164.18

These items are set forth and attached to the approved claim and were delivered to the Hamilton Creek Timber Co. from the 19th of December, 1913, to the 10th of January, 1914. They were not paid for out of the $215,000.

These cross-cut saws consist of the following items:

6 7-ft. Cross-Cuts.
2 doz. 7in. Cross-cut Files.
8 7½-in. No. 513 Cross-cut Saws.
12 7-ft. No. 503 Cross-cut Saws.

Babcock testified that the reasonable value of these saws was the same as the cost price, to-wit, $164.18. Their value was very near what they cost as they were not used much. (Test. 13.)

These saws are included in the Lendholm inventory (Com. Ex. 20).

NEUMEYER — DIMOND C.....$1312.59

Bill of steel sold on the 5th of November 1913 to the Hamilton Creek Timber Co. This bill of steel was not paid for out of the $215,000 and is an approved claim. (Note the last of the $215,000 was paid over to Dodge the early part of October, 1913, and anything sold after the early part of October, 1913, could not have been paid for out of the $215,000.)

This claim consists of the following articles:
3 Bars 1¼x4-in. Choker Hook Steel.
3 Bars 2¼-in. Rd. Bull Hook Steel.
2 Bars 1¾-in. Oct. Loading Hook Steel.

2 Bars 1¼x2¼-in. R. E. Loading Hook Steel.
2 Bars 1⅛x2½-in. R. E. Swamp Steel.
1 Bar 1x2½-in. R. E. Grab Swamp Steel.
3 Bars 2½-in. Rd. Block Swamp Steel.
3 Bars 1½x2½-in. Cross Head Steel.
3 Bars 1x3½-in. Bucking Wedge Steel.
3 Bars 1x3-in. Falling Wedge Steel.
1 Bar ⅞-in. Rd. Friction Pin Steel.
1 Bar 1-in. Rd. Friction Pin Steel.
1 Bar 1¼-in. Oct. Marlin Spike Steel.
6 Bars 1-in. Rd. Link Steel.
6 Bars 1¼-in. Rd. Link Steel.
6 Bars 1⅛-in. Rd. Cold Shut Steel.
2 Bars 5/16x5-in. Spring Board Steel.
2 Bars 1¼-in. Rd. Clevis Steel.
2 Bars ⅝-in. Oct. Cold Chisel Steel.
2 Bars ¾-in. Oct. Cold Chisel Steel.
2 Bars ⅞-in. Oct. Cold Chisel Steel.
2 Bars 1½-in. Sq. Cold Chisel Steel.

This item is included in the Lendholm inventory (complainant's exhibit 20) and also in the Lilly inventory (complainant's exhibit 21).

Babcock testified that the reasonable price of this steel was the purchase price, to-wit, $1312.59, and said on page 14: "Naturally, they didn't depreciate any; it was steel for making hooks and logging equipment."

There is no question about the value of this steel.

HOFIUS EQUIPMENT CO.....$293.63

Various tools, instruments, parts necessary for locomotive equipment. These items are set forth in the approved claim therefor and consist

of items from the 3rd of October, 1913, on. This claim was not charged against the $215,000, or was not paid out of it.

These items consist of parts for engine and were testified to be worth the cost price. Babcock could not see any reason for depreciation. (Page 14.)

These parts are set forth in the Lilly inventory and in the Lendholm inventory (plaintiff's exhibits 20 and 21).

There is no dispute about these articles being taken over and there is no dispute about their reasonable value. The enumerated list of the articles are among the exhibits.

RAILWAY EQUIPMENT CO.....$250.25

This item consists of two 35-ton high-speed Norton Jacks and were bought on the 16th of December, 1913, and were not charged against the $215,000 or paid out of it and is an approved claim.

These Norton jacks are both in the Lendholm inventory and the Lilly inventory. Babcock testified that both of these jacks were in first-class condition and were worth the price of new jacks (page 14). Cox corroborated this evidence.

GERALD E. BEEBE $150.00

2½-yd. Bagley Scraper, purchased January 24, 1914, and shipped to the Hamilton Creek Timber Company. This was not requisitioned or paid for out of the $215,000.

Babcock testified that the reasonable value of this machine was the same as the cost, as it had not

been used at the time it was taken over. (Page 14.) He testified that it laid by the depot where it was put off the train. It was in just the same condition it was when delivered there. There is no evidence to contradict the value of this machine.

WILLAMETTE IRON & STEEL CO...$2600.00

1 Yarder Engine 11x13 sold to Hamilton Creek Timber Company. $1300 was paid by the Dodge interests and the entire amount of $3900, purchase price, was charged to the $215,000, but the difference between $1300 and $3900, that is, $2600, was converted by Dodge to his own use. The creditors have a claim against this engine for $2600.00.

The title to this yarder was in the Hamilton Creek Timber Company, but only $1300 had been paid on it, leaving a balance due of $2600.00. With respect to its reasonable value at the time of the conversion Babcock testified it was brand new and worth exactly as much as it was when shipped up there, namely, $3900.00.

H. L. Cox testified that this yarder was in perfect condition when it was taken over (see Record, page 402).

The only claim that Jones and Kribs could have on this yarder was to the extent of $1300 paid by Dodge. The unpaid balance of $2600 should be paid as only $1300 came out of the $215,000, the balance being purchased upon credit of the Hamilton Creek Timber Company, and for which sum claim has been filed and approved in the bankruptcy proceedings.

WILLAMETTE IRON & STEEL CO..$407.91

Consisting of donkey engine supplies. Out of this amount $131.81 was charged to the $215,000, but was not paid. The entire bill for these items is an approved claim and this property was taken over by Jones and Kribs.

The articles composing this claim are as follows:

Parts for Scraper:
Renew Cutting Blade.
Renew 5 Digger Teeth.
Renew 2 Reinforcing Straps.
Renew Reinforcing Bar on R. H. Bottom Side.
Haul Back Lug.
1 Screwed Throttle Valve, complete tested.
2 Friction Operating Shaft Crackets, B-2100.
2 8x20 Rolls A-3562, A-4303.
1 Set Grates for 65-in. Circ. Boiler 10, A-4325.
1 H. H. Plate and Crab 3¼x4½.
2 14-in. Comb. Yard and Road Spools.
1 D. E. 1 Beam Separator for Engine No. 8779, B-139.
2 Stub Ende 2-in. Dia. 10-in. of Thread.
1 Set Dead Plates for 66-in. Circ. Boiler 2 B-4443, 2 A-4327.
New Shaft.
Assemble Parts.
I Cross-head Slipper, A-3711.

Babcock testified that these items were on the ground and were taken over on the 12th of May, 1914, and that their reasonable value was the same

as their cost value, to-wit, $407.91. (See evidence, page 16.) These articles are included both in the Lilly inventory and the Lendholm inventory.

SEATTLE CAR & FOUNDRY CO.....$6342.08

13 trucks. These trucks were sold to the Hamilton Creek Railroad Company. The first invoice being on the 10th of July, 1913, the second invoice being on the 27th of September, 1913. There is a balanec due on these trucks of $5742 unpaid and in addition $600.08 freight. All these trucks were charged against the $215,-000.00 and Dodge collected the entire amount but did not pay for the trucks.

These 13 trucks must not be confused with 17 other trucks purchased on conditional sale. We are not making any claim for the 17 trucks but only for the 13 trucks involved herein, title to which passed to the Hamilton Creek Timber Company and which were converted on the 12th of May, 1914.

This is another case of where Dodge collected the money but did not pay for the trucks, leaving an unpaid balance of $6342.08, which is a filed and approved claim.

Following the rule laid down by the Circuit Court of Appeals that only property which was bought out of the $215,000 could be taken over by Jones and Kribs they are bound to pay for property which was not so bought, and these trucks not having been paid for to the extent of $6342.08, and the insolvent estate having been damaged to that extent, it is the duty of Jones and Kribs to pay that amount to the trustee in bankruptcy because

Jones and Kribs cannot, as already pointed out, charge the misappropriation of funds by their agent to the insolvent estate.

Babcock testified that all the trucks were in good condition, except one. He said he remembered one was smashed up—badly broken and was in the shop to be repaired. The rest of them were all practically new. He said I think they were worth as much as new. (Ev., page 17.)

RAILS ALLOWED BY CIRCUIT COURT OF APPEALS ON PETITION FOR REHEARING MARCH 10, 1919, AS NOT BEING INCLUDED IN THE CONTRACT..... $9094.21

Babcock testified that there was a mile and three-quarters of steel rails. Babcock testified that these rails were worth $34 per ton and their total value about $9000 when they were taken over on the 12th of May, 1914. There is no dispute about the value of the steel rails and Cox admitted in his testimony that there was a mile and three-quarters of rails taken over. (Page 400 of Record.)

He said: "In constructing this mile and three-quarters in 1914 we used the rails that were on the ground and the ties, with the exception of about 550, which we bought. All the other material that we used was on the ground and had been previously purchased, with the exception of quite a quantity of spikes, about 20 kegs, might be 15 or 25. We purchased three switch joints. Outside of that, all the material that we used, with the exception of the timbers that we used on this bridge that we constructed,

those we bought, that is, the stringers to the bridges, the bents, whatever timber is in the bents, was on the ground."

After the first opinion was filed in this case in the Circuit Court of Appeals, the appellants asked for a modification of the opinion to include the timberland conveyed to the Hamilton Creek Timber Company of the value of $155,000, and also to have the railroad materials which were on the ground and which were used by Cox for the building of the railroad. The Circuit Court of Appeals handled this matter in the following manner (page 4 of Opinion):

> *"The appellees argue that the decree of this Court should be in effect a dismissal of the bill because there are but few possible classes of property not directly affected by the terms of the contract, namely, commissary supplies, railroad material, ties and such property. They say these things were upon the land of the J. K. Company and paid for out of the* $215,000, *and were put upon the property by Dodge for the purpose of proceeding with the construction of the railroad.*
>
> *"But as the contract did not cover these matters, we hold they are outside of its terms and ought not to be included."*

Undoubtedly this property was given to the trustee on the ground that the title to this property did not vest in the defendants until attached to the soil.

TIES ALLOWED BY CIRCUIT COURT OF APPEALS—4000 TIES, 168,000 feet at $10 per M..... $1680.00

The ties were also directly allowed by the Circuit Court of Appeals.

Babcock testified that there were 4000 ties on the ground figured at 168,000 feet at $10.00 per thousand. There is no dispute as to the number of ties on the ground or their value.

LUMBER $1287.89

This lumber is contained in the Lendholm inventory and in the Lilly inventory. The following is an itemized statement of the lumber upon which Babcock placed a value of $1287.89 and Lendholm placed a value of $1283.56:

1	12x12x30 ft.	1	8x10x24 ft.
2	28 ft.	1	8x10x18 ft.
3	24 ft.	1	6x 8x12 ft.
8	16 ft.	2	6x 8x14 ft.
1	8x10x20 ft.	1	8x 8x10 ft.
1	16 ft.	1	6x 6x32 ft.
3	10x10x22 ft.	2	12x12x30 ft.
10	12x12x16 ft.	1	26 ft.
2	12x12x24 ft.	4	6x 8x24 ft.
6	18 ft.	1	2x10x18 ft.
4	16 ft.	16	6x 6x20 ft.
1	12 ft.	7	6x 6x16 ft.
1	30 ft.	1	6x 6x30 ft.
62	6x 8x 9 ft.	6	6x 6x 6 ft.
1	8x 8x20 ft.	1	3x 6x16 ft.
1	3x 6x24 ft.	24	7x 9x 8 ft.
1	6x 8x18 ft.	2	6x12x24 ft.

7 12x12x30 ft.
5 12x12x16 ft.
7 12x12x20 ft.
4 6x12x20 ft.
3 6x12x16 ft.
1 12x12x16 ft.
1 6x12x14 ft.
10 8x16x14 ft.

4 6x16 32 ft.
4 12x12x16 ft.
2 8x17x30 ft.
2 12x12x12 ft.
17 12x12x10 ft.
1 8x17x30 ft.
6 12x12x16 ft.

350 Pcs. 1x4x16 ft. Ceiling No. 2.
402 Pcs. 1x4x16 ft. Rustic No. 2.
400 Pcs. 1x4x16 ft. Flooring No. 2.
28 1x 6x16 ft. S4S Ch.
26 1x 8x16 ft.S4S Ch.
28 1x 8x16 ft. Rustic.
1 6x 8x14 ft. Common.
4 6x12x 8 ft.
1 6x 8x24 ft.
10 Bal. Lathes.
40 Bal. *A* Shingles.
1 6x12x14 ft.
32 2x12x18 ft. S. S. E. Com.
34 2x 4x16 ft.
1 4x 6x16 ft.
5 6x 8x10 ft. S4S Com.
78 7x 9x 8 ft.
3 6x 8x20 ft.
1 12x12x16 ft.
2 6x 8x20 ft.
1 6x12x40 ft.
2 8x17x30 ft.
12 7x 9x 8 ft.
1 6x16x32 ft.
1 8x17x12 ft.
2 12x12x12 ft.
200 ft. 1x6 Cedar Planking for launch.

4 2½ Rd. 16 ft. long.
8 ⅞x16 ft. Rd.
6 1⅛x16 ft. Rd.
6 1¼x16 ft. Rd.
9 1x3x16 ft.
4 1¼x2¼x16 ft.
4 1½x1½x16 ft.
8 Pcs. 2x 4x16 ft. S. S. E. Common.
54 Pcs. 2x12x18 ft. S. S. E. Common.
1 Pcs. 6x 6x30 ft. Common Rough.
5 Pcs. 12x12x12 ft.
4 Pcs. 6x12x16 ft.
5 Pcs. 12x12x28 ft.
2 Pcs. 12x12x12 ft.
17 Pcs. 12x12x10 ft.
1 1⅞ Octagon, 16 ft.
1 1¼ Octagon, 16 ft.
4 ¾ Octagon, 16 ft.
3 ⅝ Octagon, 16 ft.
3 ⅞ Octagon, 16 ft.
2 1¼x5 in., 16 ft.
3 1¼x4 in., 16 ft.
3 1x3½ in., 16 ft.
1 1x2½ in., 16 ft.
2 1 in. Rd.
2 1⅛ in., 14 ft.
4 2½ in., 16 ft.
3 1 in., 16 ft.
2 1x3½ in., 16 ft.
1 2¼ Rd., 7 ft.
1 1¾ Oct., 7 ft.
1 2½ Rd., 11 ft.
1 1¼x4, 14 ft.

Together with the other items mentioned in the said inventories.

LOGS FROM McRAE LAND.....$820.00

The logs from the McRae land were testified to by Babcock on page 21 et seq. This testimony was corroborated by Cox on his cross-examination, who said that he sold about 137,000 feet of logs for $6.00 per thousand. At least the trustee should be allowed this amount for these, that is, $820.00.

LOGS ON BANK FROM McRAE LAND.....
.....$483.87

These logs, according to Babcock, were bucked and cut off for piling for bridges and sawed to 22 or 34-foot cuts and some as long as 40 feet, and these logs were in one of the sloughs within a set of boomsticks. Babcock testified he scaled these logs up very carefully and their value was $483.87. (See Test., page 21.)

MARSHALL WELLS CO.....$4095.26

All these goods and machinery were shipped to the Hamilton Creek Timber Company and is an approved claim. Invoices of this item are submitted. This bill of goods was not requisitioned and was not paid out of the $215,000, as all these goods were sold after the $215,000 had been exhausted.

Babcock testified that all these materials were taken over on the 12th of May, 1914, and that their reasonable value was the same as their cost value, to-wit, the sum of $4095.26. The exhibit setting forth these items in plaintiff's exhibit 12 and to show the Court the articles that make up this amount, the following is copied from the exhibit:

2 only 4-in. Blk. Cast Ells.
2 only 4-in. Cast Flanges, faced and drilled.
6 only 60 Mars. Axe Stones.
1 only 4x10 Blk. Nipples.
1 piece 4-in. Black Pipe 80½ in. long, 2 threads.
1 length 1½-in. Black Pipe.
2 only 4-in. reg. Thread.
1 only 4-in. Cut.
10 rolls 1 ply Mars. Roofing.
1 doz. 6-in. Dampers.
1 doz. 20-lb. Carpenter's Pencils Zen.
1/6 doz. 100 Dandy Horse Brushes.
¼ doz. ¾-in. Swivel Snaps.
3 only 1⅛x8 ft. Butt Chains.
1/6 doz. No. 114 Pike Poles.
1/6 doz. No. 116 Pike Poles.
100 only ⅝ Rd. Eye Rafting Dogs.
1/12 doz. 10014-in. Rafting Augur.
¾ 550 Horse Brushes.
2 ton Blacksmith Coal.
1 doz. 33W, 13W and W Pitchers.
5/6 gross 52 Montana Tea Spoons.
1 only ½-in. Pipe Tap.
12 only 1-in. Williams Globe Vales.
6 only 1¼-in. Williams Globe Valves.
1 bar 2-in. Rd. Mild Steel.
1 bar 2½-in. Rd. Mild Steel.
1 bar 3-in. Rd. Mild Steel.
1 coil ¾ Std. Manila Rope.
2 only 10x12x16 oz. Tarpartens.
1 only 2134½A 2-in. Will Globe Valve.
6 only 2-in. Blk. Ells.
6 doz. 7-in. Mars. M B Files.
2 doz. 6 Mars. M B Tiles.

½ doz. 1-pt. cans Neatsfoot Oil.
½ doz. 39 W Railroad Lanterns.
½ doz. 39 Railroad Lant. Globes.
1/12 doz. 5S 1½ Stebbins Oil Gates.
1/12 doz. No. 1 Bunghole Borers.
1 piece 3-in. Blk. Pipe, 1ft. 1 in. long.
2 only 3-in. Tread.
1 doz. 35 Viscol Oil.
1 doz. 55 Whale Amber.
30 only 30 Roch. Lamps.
½ doz. 303 No. 3 Roch. Lamp Chimneys.
½ doz. 72 Ray Gaso Mantles.
50 Jts. 6-in. Perf. Stove Pipe.
12 sheets 20x28 Nepigon Tin.
4 pr. 831-A 3½x3½ Jap. Butts.
1/3 doz. 82- Ki Mortise Locks.
1 doz. 7761 Blank Keys.
1/12 doz. 1056-J Foot Bolts.
1/12 doz. 1055-J Chain Bolts.
¼ gross 60 Coat and Hat Hooks.
1/12 doz. 16 Oilers.
325 ft. 8-in. Galv. Corrg. Culvert.
12 lbs. 6-oz. C H Hung Nails.
6 cans 5-lb. Med. Badger Compound.
2 doz. 7-in. Slim Taper Files, Mars.
1/6 doz. 34-in. Ship Adze Handles.
1 only No. 16 600-lb. Hart Platform Scale.
1 box ⅜ Sq. Peerless High Pressure Packing.
1 box ½ Sq. Peerless High Pressure Packing.
1 box ⅝ Sq. Peerless High Pressure Packing.
6 only 9 Yankee Nic. Watches.
1 only Marathon Auto Alarm Clock.
1 doz. No. 2 Mars. Lanterns.
½ doz. 16 Jap. Dust Pans.
6 only ¼ Black Ells.

6 only ¼ Black Tees.
6 only ⅜ Black Ells.
6 only ⅜ Black Tees.
6 ⅜ Black Short Nipples.
6 ¼ Black Short Nipples.
6 ¼x⅛ Black Bushings.
6 ⅜x¼ Black Bushings.
6 ½x⅜ Black Bushings.
6 ⅜x¼ Black Reducers.
6 ½x⅜ Black Reducers.
1 doz. 540 4 lbs. O. H. M. Swamping Axes.
1 doz. 540 4½ lbs. O. H. M. Swamping Axes.
6 only ¼ Black Plugs.
6 only ⅜ Black Plugs.
6 only ¼ Black Couplings.
6 only ⅜ Black Couplings.
3 gals. Lard Oil.
1 can 5-gal. Fish Oil.
6 only 51⅛ Pet Cocks.
6 only 1-lb. cans Dixon Flake Graphite.
2 doz. 36-in. D. B. Ben. Ith Oct. Axe Hdles.
1 drum.
1 SPL. 476-E No. 13 Leading Wire.
1/12 doz. 20 Tin Funnels.
1/12 doz. 25 Tin Funnels.
1/12 doz. 30 Tin Funnels.
1 keg 6 Com. Wire Nails.
1 coil ⅜ Sid. Manila Rope.
24 only ⅞-tooth Chains, stamped "C. B. Co."
2 only 1½-in. Coupling Nuts for No. 8 U. S. Injector.
1 only 7 Timber Dollie.
1 doz. 1303 W. 5 Hickory Bangor Peavies.
½ doz. ZS44½P 4 to 4½ Zenith Ship Adzes.
1 doz. 34-in. Ship Adze Handles.

½ doz. Hickory Rev. Broad Axe Handles.
7/12 doz. 842 1½x28 Blind Butts.
1/12 gross 40 4-in. Gate Hooks and Eyes.
6 only 1¼ 1170B Choker Sockets.
6 only 1170C 1¼ Peters Choker Hooks.
1 box Mars. Genuine Babbitt.
2 doz. 5⅝x12 Ga. Glasses.
1 doz. 8¾x12 Ga. Glasses.
1 only 30 Chesterton Ga. Glass Cutter.
1 only 27 Sight Feed Valve for 1 pt. Det. Lubricator.
1 doz. 8-oz. Uph. Carpet.
1 only 8-15 Fern Cook Stove.
1 only 21-8in. Dble. Wood Tackle Block.
1 only 22 8-in. Triple Wood Block.
1 only 3x4x12 ft. Rough Oak Wagon Pole.
1coil 1-in. Std. Manila Rope.
5 only Drip Pans 19x23x4.
1/12 14-in. French Egg Whips.
1/12 doz. 20 Tin Scoops.
1/12 doz. 30 Tin Scoops.
33 only Swifters.
½ doz. 202 5½/8 Ship Augers.
½ doz. 202 4½/8 Ship Augers.
½ doz. 202 7½/8 Ship Augers.
1 only 7 Timber Dollies.
12 only 1-in. Williams Globe Valves.
6 only 1¼-in. Williams Globe Valves.
3 only No. 30 Lamps.
1 only No. 300 Air-O-Lite Lamp.
1 only 3x6 Blk. Nipples.
1 only ¼x1½ Blk. Nipples.
1 only ¼x2 Blk. Nipples.
1 only ¼x2½ Blk. Nipples.
1 only ¼-in. Close.

3 only 3-in. Cast Ells.
1 only 2½-in. Cast Ells.
2 only 1¼-in. Cast Ells.
1 only ¼ Mall. Ells.
1 only 3x2½x2½ Cast Tee.
1 only 1¼ Blk. Coupling.
1 only ⅜x¼ Blk. Bushings.
1 only 1¼-in. Williams Globe Valve.
1 piece 3-in. Black Pipe, 58½ in.
2 pieces 2½ in. Black Pipe, 12 in.
1 piece 1¼-in. Black Pipe, 43 in.
1 piece 1¼-in. Black Pipe, 10½ in.

T. B. E.

2 only 3-in. Pipe Threads.
4 only 2½-in. Pipe Threads
4 only 1¼-in. Pipe Threads.
5 ft. High Tension Wire.
1 only ⅜ Pipe Tap No. 101.
½ doz. 14-in. Mars. M. B. Files.
½ doz. 16-in. Mars. M. B. Files.
½ doz. 18-in. Mars. M. B. Files.
1 length ¼-in. Black Pipe.
1 length ⅜-in. Black Pipe.
2 doz. 110 6-in. Stove Pipe Elbows.
1/12 doz. No. 1 Tur. Nead Glass Cutters.
5 kegs ½x10 Blk. Boat Spikes.
2 kegs ⅜x9 Blk. Boat Spikes.
1 doz. 3½/8 Hungarian Nails.
1 doz. 4⅛ Hungarian Nails.
1 M. CC. Boot Calks.
2 doz. 58 Tap Soles.
1/24 doz. 50 ⅞ Swivel Snaps.
1 doz. No. 56 1-lb. Whale Amber.
1 doz. ½-pt. Watertight Oil.
1/12 doz. 609 Wash Boilers.

1/12 doz. 31 1 A-1 Oil Cans.
½ doz. No. 2 Marswell Cold Blast Lanterns.
1 ton Blacksmith Coal.
1 bale D Colored Waste.
5 kegs ½x10 Black Boat Spikes.
2 doz. PR. 902 6-in. Strap Hinges.
6 doz. 7-in. Mars. M. B. Files.
2 gross 1x10 F. H. Brt. Screws.
1 keg ⅝ Wrt. Washers.
1 keg ¾ Wrt. Washers.
16 Spls. 3-ply Mars. Roofing.
30 ft. 350 1½ Hard Rubber Suction Hose.
8 only ¾x48 Machine Bolts, 4-in. Threads.
6 only ¾-in. Std. Hor. Check Valves.
24 only 1-in. Blk. Couplings.
24 only 1-in. Blk. Unions.
1/12 doz. 4¾ D. B. Cal. Rev. Axes.
6 only 513 No. O Grease Cups, ¼ Conn.
1 only 8-Day Marathon Alarm Clocks.
1 only 445½ Hartford Scale.
1 only 8-Day Marathon Alarm Clock.
1 only 28-in. Airtight T. D.
3 kegs ⅜x9 Blk. Boat Spikes.
1 keg ⅝ Mall. Washers.
1 keg ¾ Mall. Washers.
2 only 300 Air-O-Lite Lamps.
1 doz. No. 72 Gas Mantles.
1 ton B. S. Coal.
2 doz. Cork Insoles, assorted.
100 ⅜x3 Carriage Bolts.
150 ⅜x2½ Carriage Bolts.
1 only 1001 Raincoat.
48 sheets 10-ft. Galv. Org. Iron.
9 only 645 M-7 Bucking Wedges.
2 only 1301 RR. Undercutters.

1 Drum Water White Kerosene in Drums.
1 only Iron Drum.
1 only 303 2-in. Jenkins 1 B. Blow-Off Valve.
1 ton Blacksmith Coal.
25 only 01-¾ Bed Springs.
25 only 1781 8 A. B. Grade ¾ Mattress Burlap.
12 only 5-lb. cans No. 2 Badger Compound.
25 lbs. Climax Welding Compound.
4 doz. No. 103 12-in. Mars. Hack Saw Blades.
2 yds. 1/8 Rainbow Packing.
50 lbs. 1 Hex. Mfg. Std. Tap Nuts.
75 lbs. 1¼ Hex. Mfg. Std. Tap Nuts.
25 only 1½ Hex. Mfg. Std. Tap Nuts.
1 only 1¼ Williams Horz. Check Valve.
1 only 2 175 lbs. Pop Safety Valve.
1 only 1¼ 36 3 Way Sq. Hd. Valve.
12 only 515 No. 2⅜ Grease Cups.
30 ft. 1¼ 6-ply Steam Hose.
50 lbs. Fire Clay.
6 8lbs Mars. Babbitt.
68 lbs. Auto Friction Babbitt.
1 only part 343 for 3-pt. or 2-qt. Manzel Oil Pump.
1 only part 341 for same.
1 only part 304 for same.
1 only part 329 for same.
1 case 1-lb. Whale Amber.
1 doz. ½ pt. Viscol Oil.
¼ doz. 2-C Lanterns.
1 only 125 Cherry Heater.
1 only 22 Com. Airtight Heater.
1 only No. 35 Sugar Kettle.
20 1¼ Dredge Chain.
26 rolls 3-ply Mars. Roofing.
4010 7 ft. 1 in. Black Pipe.

18 only 12x14 8 Lt.Plain Rail Glazed Windows.
4000 ft. No. 18 Signal Strand.
1 doz. 570 4½ lbs. Falling Axes.
1 doz. 600 4¾ Calif. Rev. Axes.
3 doz. 36-in. Extra Sledge Handles.
6 only 14-in. Stillson Wrenches.
1 only 14-in. 2 Flue Cleaner.
1 set No. 3 Light Horse Shoes.
5 lbs. No. 6 Capewell H. S. Nails.
12 ¼x½ Set Screws.
12 ¼x¾ Set Screws.
12 ¼x1 Set Screws.
12 ½x½ Set Screws.
12 ¼x¾ Set Screws.
12 ½x1 Set Screws.
12 ⅝x¾ Set Screws.
12 ⅝x1 Set Screws.
12 ⅝x1½ Set Screws.
12 ¾x1 Set Screws.
12 ¼x1½ Set Screws.
1 only 10-in. Trime Wrench.
1/12 doz. 10 Westcott Nut Wrenches.
1/12 doz. 12 Westcott Nut Wrenches.
6 only 5-lb. cans No. 2 Badger Compound.
2 only 5-lb. box Boraxette.
2 doz. No. 7 ⅝x12 Gauge Glasses.
1 box ¼ No. 20 Packing.
1 box ⅜ No. 20 Packing.
1 box ½ No. 20 Packing.
1 box ⅝ No. 20 Packing.
½ pt. Muriatic Acid.
1 M. O. Boot Calks.
1 doz. 3-oz. Gimp Tacks.
1/12 doz. No. 75 Tallow Pots.
1 doz. 103 Cannon Pump Oilers.

6 only 10 lbs. 740 D. F. Sledges.
4 only 12 lbs. 750 D. F. Sledges.
2 doz. 40-in. Zenith Oct. D. B. Axe Handles.
2 doz. 35-in. Zenith Oct. D. B. Axe Handles.
1 ton Blacksmith Coal.
5 bars ¼ Rd. Com. Iron.
5 bars 5/14 Com. Iron.
5 bars ⅜ Com. Iron.
5 bars ½ Com. Iron.
5 bars ⅝ Com. Iron.
5 bars ¾ Com. Iron.
5 bars 1 Com. Iron.
3 bars 1½ Rd. Norway Iron.
2 bars 1¼ Rd. Norway Iron.
½ doz. IXL Stove Shovels.
6 cases Union Kerosene, 5-gal. cans.
2 drums Com. Coal Oil.
1 bale D Colored Cotton Waste.

The cost value and the expert opinion of value is the very best evidence that can be produced. This property was not paid for out of the $215,000.

POWDER $937.54

This powder was sold by the DuPont de Nemours Co. Their total claim against the estate is $2790.77. $588.95 was bought after the $215,000 had been exhausted.

Babcock and Lendholm testified as to the powder and its value and the aomunt of powder taken over on May 12, 1914, to-wit, the sum of $937.54. That this powder was not paid for is evidenced by the approved claim of DuPont, etc., Exhibit 13.

COMMISSARY $2565.93

This commissary stock is represented by the following claims approved against the Hamilton Creek Timber Company.

Wadhams & Co	$4846.29
Chris Solum Shoe Co	891.87
Portland Flouring Mills	88.29
Dogherty Shoe Co	201.55
Theo. Bergman Shoe Co	229.05
Neustadter	1083.69
Everding & Farrell	301.31

The inventory of this stock and the values placed thereupon by Babcock are set forth as follows: (Page 270 Record.)

6 cans K. C. Baking Powder, 18¾c ea	$ 1.13
1 carton Yours Truly Macaroni, 25 lbs	1.38
15 Diamond W Macaroni, 1s, 90c doz	1.12
16 Diamond W Noodles, 1s, 90c doz	1.20
8 cans Wadco Oysters, $2.20 doz	1.37
23 cans Bayocean Salmon, $1.25 doz	2.40
7 cans June Peas, $1.05 doz	.61
37 cans Pheasant Brand String Beans, 95c doz.	2.93
6 pkgs. Diamond W Head Rice, 1s, $1.00 doz.	.50
27 pkgs. Diamond W Soda, 1s, 4½c each	1.22
6 bottles Catsup, 10½c each	.63
6 pkgs. Diamond W Tea, 1c, 37½c each	2.25
6 pkgs. Diamond W. Tea, ½s, 19c each	1.14
4 pkgs. Diamond W Salt, 82½c doz	.25
46 pkgs. Riverside Starch (gloss), 6¼c each	2.87
15 pkgs. Quaker Rolled Oats, 10c each	1.50

12 pkgs. Diamond W Pancake Flour, $1.25 doz.	1.25
9 2-oz. Diamond W Pepper, 75c doz.	.56
22 2-oz. Diamond W Mustard, 75c doz.	1.37
10 2-oz. Diamond W Allspice, 80c doz.	.67
10 2-oz. Diamond W Cloves, 85c doz.	.71
9 2-oz. Diamond W Ginger, 80c doz.	.60
10 2-oz. Diamond W Cayenne, $1.00 doz.	.83
18 2-oz. Diamond W Cinnamon, $1.35 doz	2.02
17 2-oz. Diamond W Nutmeg, $1.35 doz.	1.91
15 cans Corn, 90c doz.	1.13
6 cans Pineapple, $1.30 doz.	.65
3 cans Pheasant Brand Peaches, $1.60 doz.	.40
27 cans Wadco Tomatoes, $1.02½ doz.	2.31
5 bottles 2-oz. Diamond W Vanilla Extract, $3.00 doz.	1.25
9 bottles 2-oz. Diamond W Lemon Extract, $2.00 doz.	1.50
8 pkgs. Yeast Foam, 40c doz.	.27
2 pkgs. Magic, 40c doz.	.07
6 ½-lb. Diamond W. Cinnamon, 36 1/3c each	2.18
2 ½-lb. Diamond W Mustard, 18c each.	.36
17 cans Beechnut Pork and Beans, $1.00 doz.	1.42
24 cans Yeloban Milk, 92c doz.	1.84
1 bucket Columbia Syrup	.23
1 bucket 5-lbs. Columbia Lard, $8.77 doz.	.73
1 sack Diamond W Hominy	.28
22 short pts. Knight's Mixed Pickles, $1.20 doz.	2.20
22 pts. Mixed Picnic, $2.25 doz.	4.15
10 qts. Mixed Picnic, $3.25 doz.	2.71

8 qts. Sour Picnic, $3.25 doz	2.17
31 boxes Toothpicks, 37c doz	.95
4 11/12 doz. Gelatine, 83½c doz	4.10
21 cans Wadco Pumpkin, $1.25 doz	2.19
19 cans Pheasant Brand Apricots, $1.65 doz.	2.65
10 lbs. Navy Beans, 5c lb	.50
20 lbs. Sugar, 5c lb	1.00
10 lbs. Lima Beans, 5c lb	.50
2 5/12 doz. bottles Wadco Vinegar, qts., $1.25 doz	3.02
1 1/3 doz. bottles Diamond W Bluing, 75c doz.	1.00
3½ doz. cans Dutch Cleanser (4 doz. case), $3.45 case	3.02
2 1/3 doz. cakes Bon Ami, 84c doz	1.96
10 pkgs. Citrus Washing Powder,18 1/3c each	1.83
2½ doz. Glycerine Soap, $9.00 gross	1.88
3 1/3 doz. bars Sapolio, 80c doz	2.67
20 bars Jergins' Pumice Soap, 6½c each	1.30
46 small bars Tar Soap, 3¾c each	1.72
75 cakes Ivory Soap, 7c each	5.25
4 cakes Elk Savon Soap, 2c each	.08
1 doz. No. 2 Lamp Burners, 85c doz	.85
2 cases Black Diamond Matches, $3.40 case	6.80
58 boxes Black Diamond Matches (100 in case), $3.40 case	1.97
2 Washboards, $4.25 doz	.71
7 Brooms, $4.25 doz	2.49
5 1/3 doz. No. 2 Lamp Chimneys, 80c doz.	4.27
2 only No. 1 Lamp Chimneys, 55c doz	.09
2 No. 2 Rochester Chimneys, $1.00 doz	.17

16 No. 1 R. R. Lantern Globes, $1.00 doz.	.50
12 No. 2 R. R. Lantern Globes, 95c doz.	.95
19 Cob Pipes, 30c doz	.47
Lot 3672—5 Pipes, $4.00 doz	2.67
Lot 1120½—5 Pipes, $4.00 doz	1.66
2 Wellington Pipes, $4.00 doz	.67
24 Pipes, $2.00 doz	4.00
286 White Cigarette Papers, $1.85 per 100	5.20
8 boxes Mexican Cigarette Papers, $1.00 box	8.00
48 pkgs. Mexican Cigarette Papers, 2c ea.	.96
75 lbs. Potatoes, $1.00 per 100 lbs	.75
12 1/3 doz. Edgeworth, 96c doz	11.84
14¾ doz. Gold Shore, 97c doz	14.30
2¼ doz. Five Brothers, 88c doz	1.98
8¾ doz. Dixie Queen, 96c doz	8.40
6 1/6 doz. Pedro, $1.00 doz	6.17
9 1/3 doz. Peerless, 47½c doz	4.43
29 11/12 doz. Bull Durham, 44½c doz	13.31
16¼ doz. Tuxedo, 96c doz	15.60
19¼ doz. Prince Albert, 96c doz	18.48
8 11/12 doz. Union Leader, 97c doz	8.65
12 doz. Velvet, 96c doz	11.52
4 lbs. Westover, 53c lb	2.12
5 lbs. Horseshoe, 43c lb	2.15
12½ lbs. Star, 45c lb	5.67
78 boxes Snuff, 4c each	3.12
450 Beechwood Cigars, $35.00 M	15.75
210 Porto Wana Cigars, $32.08 M	6.74
10 Cortez Cigars, $62.50 M	3.13
14 pr. North Coast Loggers, $3.60 pr	49.00
12 pr. Chris Solum, $3.21 pr	38.52
4 pr Goodyear, $3.00 pr	12.00
5 pr. Dougherty Red Logger, $6.00 pr	30.00
5 pr. Bergmann Calked, $7.00 pr	35.00

Lot 405—8 pr. Chris Solum, $6.50 pr..... 52.00
Lot 420—24 pr. Chris Solum Sp. H. Calked, $5.00 pr.....120.00
Lot 419—22 pr. Chris Solum Sp. H. Calked, $5.10 pr.....112.20
Lot 427—2 pr. Chris Solum Heeled, Calked, $5.25 pr.....115.50
Lot 419—7 pr. Chris Solum Heeled, Calked, $5.15 pr..... 36.05
Lot 427—1 pr. Chris Solum Heeled..... 4.75
Lot 418—7 pr. Chris Solum Heeled, $4.60 pr. 32.20
7 pr. low, black (Sweney), $2.25 pr..... 15.75
1 pr. low, tan (Sweney)..... 2.50
Lot 2611—11/12 doz. Undershirts, wool, $12.00 doz..... 11.00
Lot 2611—10/12 doz. Underdrawers, wool, $12.00 doz..... 10.00
7/8—11/6 doz. Undershirts, wool, $12 doz... 14.00
2601—5/12 doz. Underdrawers, wool, $9 doz. 3.75
2601—6/12 doz. Undershirts, wool, $9 doz. 4.50
2545—1½ doz. Undershirts, wool, $22 doz. 33.00
2545—1½ doz. Underdrawers, wool, $22 doz. 33.00
W-5—9/12 doz. Undershirts,wool, $11 doz. 8.25
2543—1 5/12 doz. Underdrawers, wool, (14/12), $9.00 doz..... 12.75
Odd Wool—2 8/12 doz. Undershirts, wool, $12.00 doz..... 32.00
11—1 1/12 doz. Undershirts, cotton, $7 doz. 7.58
8—10 4/12 doz. Underdrawers, cotton, $6.00 doz..... 2.00

8—10 1 3/12 doz. Undershirts, cotton, $6.00 doz. 7.50
4/12 doz. Undershirts, cotton ribbed, $4.50 doz. 1.50
Lot 1170—1 2/12 doz. Flannel Shirts, blue, $27.00 doz. 31.50
Lot 850 SB—1 doz. Flannel Shirts, blue, $23.00 doz. 23.00
Odd—1/12 doz. Flannel Shirts, blue, $16.50 doz. 1.37
550—1¼ doz. Flannel Shirts, blue, $15.00 doz. 18.75
429—1 5/12 doz. Flannel Overshirts, blue, $42.00 doz. 59.50
462—4/12 doz. Flannel Overshirts, gray, $42.00 doz.— 14.00
418—1/12 doz. Flannel Overshirts, blue, $31.50 doz. 2.65
5/12 doz. Flannel Shirts, mixed, $12.00 doz. 5.00
6/12 doz. Flannel Shirts, mixed (one bad) 15.00
2 2/12 doz. Cotton Overshirts, $4.50 doz. 9.75
18 pr. Cotton Shoe Laces, 5c doz. ..... .08
26 2/3 doz. Blue Handkerchiefs, 67½c doz. 18.00
1/12 doz. Bib Overalls, $10.75 doz. ..... .90
3 7/12 doz. Plain Overalls, $9.25 doz. .. 33.15
2 8/12 doz. Jumpers, $8.25 doz. 22.00
3 pr. Corduroy Pants, $1.75 each 5.25
2 pr. Cotton Pants, $9.00 doz. 1.50
1 pr. Bib Overalls (Sweney) ..... .75
1 pr. Slicker Pants, $8.80 doz. ..... .73
1 1/3 doz. Slicker Coats, $9.25 doz. 12.33
15¾ length Aquapelle Coats, $3.50 each 54.00

11½ doz. Plush Caps, $12.00 doz	11.00
2/12 doz. Leather Caps, $12.00 doz	2.00
10 pr. Arm Bands (retail 25c), $2.00 doz.	1.66
11 pr. Arm Bands (retail 15c), $1.50 doz.	1.38
40 pr. Arm Bands (retail 10c), 75c doz	4.00
2 pr. Wool Gloves, $4.50 doz	.75
4 pr. Gauntlet Gloves, $13.50 doz	4.50
10 pr. Leather Mittens, $9.00 doz	7.50
10 pr. Canvas Gloves, 85c doz	.71
Lot 951—1 1/12 doz. Gray Cashmere Sox, $2.17 doz	2.54
2 doz. pr. Cotton Sox, 75c doz	1.50
10 pr. Crown Suspenders, $4.37 doz	3.65
Job Rubber Boots	22.00
1 only pr. Paris Garters, $1.90 doz	.16
6 5/12 doz. Slicker Hats, $2.20 doz	14.11
12 pr. Wool Blankets, $1.65 each	19.80
4 pr. Washington Blankets, $1.55 each	6.20
23 pr. Cotton Blankets, $1.30 each	29.90
Apples, canned, 8s, 4 cases @ $2.75	11.00
Apples, dried, 50s, 2 boxes @ $4.00	8.00
Bacon, 5 sides, average $3.03 each	15.15
Barley, Pearl, 2 sacks @ $1.38	2.75
Beans, Pink, 1½ sacks @ $3.30	4.95
Beans, Pheasant Brand, String, 1 11/12 cases @ $3.50	6.71
Beans, Navy, 1 sack and 105 lbs. @ $3.85 cwt.	11.15
Blackberries, 1/3 case @ $3.75	1.25
Brooms, Heavy Mill, 1/3 doz. @ $6.00	2.00
Brush, Scrub	1.34
Brush, Sink	.12
Butter, Cedar Brook	37.80
Catsup, canned, 2 cases @ $6.00	12.00
Catsup, jackets, 4@ $2.40	9.60

Cocoanut, 3 buckets @ $3.70	11.10
Codfish, ½ box, 20 lbs., @ 9½c lb	1.90
Coloring Egg Yellow, 1 qt	.85
Compound, Lard, 2 cans 50s @ $5.01	10.01
Crackers, 1 case 20 lbs	1.44
Culvert, 325 ft. 8 in. gal. Culvert	158.44
Currants, 1 box 25 lbs	2.75
Gold Dust	.18
Extract, Lemon (contract)	22.50
Extract, Vanilla, 7 qts. @ $1.55 and contract $38.75	49.60
Flour, 49s, 51 sacks	57.37
Flour, Graham, 5 sacks @ $1.15	5.75
Flour, Rye, 3 sacks @ $1.12	3.36
Ham, 3@ $2.32	6.96
Kraut, Sour, 2 kegs @ $5.12, 1 keg @ $4.75	14.99
Lime, Chloride of, 42 cans @ 17c	2.94
Macaroni, 2 boxes, 25c, 50 lbs. @ 5½c	2.75
Meal, Corn, 1 sack	1.30
Mince Meat, 2 kegs @ $13.12	26.24
Milk, 26¼ cases @ $3.67½ (Yeloban)	96.46
Molasses, 2 jackets @ $1.65	3.30
Noodles, 1 @ $1.80, 2½ @ $2.75	8.67
Oil, Salad, 6 cans @ 47½c each	2.84
Peaches, Dried, 2 boxes 50s @ $3.63	7.25
Peas, Canned, 8s, 5/12 case @ $5.25	2.19
Petre, Salt	.80
Powder, Baking, 5 cans Diamond W @ 75c	3.75
Prunes, Dried, 2 cases @ $4.25	8.50
Pumpkin, 1 case	2.65
Raisins, 1 case @ $3.00, 1 case @ $3.75	6.75
Rhubarb, 2 cases @ $2.75	5.50
Rice, 1½ sacks @ $4.75	7.15
Salt, 4 4/5 sacks @ 55c	2.64

Soap, Laundry	16.45
Soda, Diamond W, 14 @ 4½c	.63
Spaghetti, 1 case	2.75
Spices, Allspice	1.44
Spices, Cayenne	1.60
Spices, Cinnamon	2.94
Spices, Cloves	2.52
Spices, Ginger	.15
Spices, Mace	.60
Spices, Mustard	4.79
Spices, Nutmeg	1.32
Spices, Paprika, 3 lbs. @ 60c	1.80
Spices, Pepper	7.20
Spices, Chili Powder	2.00
Spices, Curry Powder	1.28
Spices, Sage	.15
Spinach, ½ case	2.20
Squash, canned, 1 case	2.25
Starch, Corn, 6 pkgs. 1s @ 5¼c	.31
Sugar, Granulated, 6 sacks	27.60
Sugar, Powdered, 1 case 21 lbs., 1 case 18 lbs. @ $5.45 cwt	2.12
Syrup, 1 jacket S. D	1.90
Tapioca, 3 sacks @ $1.38	4.12
Tomatoes, 3 1/6 half-cases @ $1.50	4.75
Vegetables, 47 sacks @ $1.32 3/5	62.32
Vinegar, 3 kegs	9.00
Yeast, 2/3 box @ $1.20	.80

All this property was in the store building that was at Hamilton Creek, and Babcock made a careful inventory of it on or about the 12th of May, 1914 (page 24). Being in the store building it was all new stuff.

FAIRBANKS MORSE CO..... $154.75

This item consists of the following articles:

1 set Eclipse Tank Fixtures.....$60.60
1 Push Car 37.75
1 4½x3x4 Steam Pump..... 56.50

These things were taken over, on the 12th of May, 1914, by Jones and Kribs. These did not depreciate in value because they were all new goods.

LOGGERS' OIL EQUIPMENT CO.....$450.00

Oil burner equipment complete, stored in commissary house. Purchased from Loggers' Equipment Company. Not paid for out of the $215,000. This claim is included in the approved claim of the Loggers' Oil Equipment Company for $1500.00.

This was an oil burner for donkey engine stored in commissary. It was new and was worth its full value of $450.00. (Babcock's Test., page 24.)

RASMUSSEN & CO..... $25.57
51 gal. Oil.

This oil was for steam cylinder that was on the ground at the time it was taken over. It was worth what it was invoiced for. (Babcock's Test., page 25.)

STANDARD OIL CO.....$179.77

This was fuel oil on the ground at the time and the amount stated is its reasonable value.

HORSE $75.00

Babcock testified the horse was taken over and that it was worth $75.00 (page 25).

BRIDGE IRON MISCELLANEOUS MATERIALS $464.13

This item consists of bolts, separators and washers for completing the bridges on the railroad line. They were all in the kegs in which they were shipped and were new, and were worth full value and were valud at $464.13 (page 25).

BUNKHOUSES $1200.00

This item consists of 12 bunkhouses, 12x26, which were built on skids so as to load on cars.

Babcock testified regarding these bunkhouses (page 138 of the testimony submitted at the former hearing). He said: "I think that (item) consists of 12 bunkhouses 12x26 feet, all built on skids so as to load on cars."

Lilly's (Jones' agent) inventory made for Jones and Kribs had these bunkhouses listed as "12 movable bunkhouses." They were also listed by Lendholm in his inventory as 12 standard bunkhouses.

These bunkhouses being movable, are personal property and could be carried from one part of the work to another. Not being affixed to the real estate, they were chattels and not having been paid for by Jones and Kribs, they belonged to the bankrupts.

FLAT CAR $985.00

This is admitted to have been taken over in the Lilly inventory made for Jones and Kribs. It was also enumerated in the inventory made by Lendholm and its reasonable value is testified to by Babcock as $985.00.

BALLAST CAR	$487.15
TRACKLAYING CAR	$133.59
OFFICE FIXTURES	$300.00

These items are included in the Lilly inventory and their value is fixed both by Lendholm and Babcock to be the same as that set forth in the inventory.

In connection with the foregoing it is to be noted that the defendants have offered no evidence against the value of any of the property taken over.

As this accounting stands there is no evidence whatsoever to contradict the evidence of the plaintiff either as to the property being taken over or the value of the property taken over. The only defense put up is that the Circuit Court of Appeals was wrong in holding that this property was not included in the forfeiture clause. The mere statement of this proposition shows than it can be no defense, for the decision of the Circuit Court of Appeals is the law of this case.

We attempted in this case to have a master appointed to check over all the accounts and furnish a report to the Court in order to save the Court from making the examination, but the defendants insisted that no master be chosen. After having succeeded in preventing a master from being appointed, the defendants claim that the evidence is not satisfactory or sufficient to establish the issues in this case. But we want to point out to the Court that we furnished the bills and invoices and showed the value of the property by expert testimony. In addition to this the books of the bankrupts are before the Court, and

if it is desired to go into the books to further ascertain the value of the property, the opportunity for that was apparent, although we believe that the evidence of the experts and the evidence of the values, as furnished by the cost values, is abundantly sufficient.

Judge Corliss said in his argument:

> *"It is perfectly impossible for this Court to pick out any piece of personal property and say with respect to it under the evidence in this case that this property was taken by the J. K. Lumber Company and was not paid for out of the* $215,000.

Our answer is that it is perfectly clear that this entire statement quoted above is erroneous. We have shown by evidence beyond dispute that none of the $215,000 was applied to any of the property claimed in this accounting. In the case of the Willamette Yarder and the trucks for which Dodge received the money, it has already been pointed out that he failed to pay this money on these items, and his misdirection of these funds is a thing that the creditors are in no way connected with, and particularly since Dodge was the agent of the defendants in the disbursement of this fund.

We have already pointed out that the evidence in this case went to the value of all the property taken over minutely. Each article was segregated and the value of the article at the time it was taken over was given in evidence. We showed the cost value and

the expert value. We are familiar with the rule that in cases of this kind, where the conversion occurred over six years ago, that we might give an expert opinion of the lump value of all the articles taken over. We have cited authorities that this could be done and would be sufficient in many cases, especially where the property had been lost or destroyed. In this case the property has been used for several years by these defendants and has been either lost, destroyed or disposed of, so that to require us to go further would be to require us to perform the impossible. As a practical matter, devoid of all technicality, the Court can see that we have produced evidence of the actual value of the property. The very best evidence of the value of any property is the cost value, coupled with expert opinion as to each and every item at the time of the conversion. If the property was taken over yesterday it would be difficult for us to either conceive of, or obtain any better evidence than that furnished at the trial. Each of the different items is enumerated, segregated and classified. Further than that the evidence before the Court is conclusive that none of the $215,000 was used to purchase or obtain any of the property claimed by the plaintiff to be included in the accounting.

In Chicago v. Ohio City Lumber Co., 214 Fed. 751, at page 754, the Circuit Court of Appeals for the Sixth Circuit said:

> *"Where more accurate evidence is not available or obtainable, any person, whether owner,*

active manager or employe, who is familiar with the property and goods connected with and used in a business, although not an expert, may testify as to the value if such property when destroyed by fire, and his estimates of value may be given in single or gross amounts. Union Pacific R. Co. v. Lucas, 136 *Fed.* 374, 377, 69 *C. C. A.* 218; *Walker v. Collins,* 50 *Fed.* 737, 740, 1 *C. C.* 642; *Jensen v. Palatine Ins. Co.,* 81 *Neb.* 523, 116 *N. W.* 286; *Thomason v. Capital Ins. Co.,* 92 *Iowa* 72, 61 *N. W.* 843; *Bolte & Jansen v. Equitable Fire Ins. Ass'n,* 23 *S. D.* 240, 121 *N. W.* 773; *Farley v. Springs Garden Ins. Co.,* 148 *Wis.* 622, 134 *N. W.* 1054, 10561; 17 *Cyc.* 113, 115"

The defendants claim that the equities are in their favor, but by any process of reasoning the only property that the defendants could take was the property included in the $215,000 because that was the only property that the bankrupt corporations were obliged to acquire under the contract. Both Jones and Kribs testified that when they converted the property they did not make any investigation to ascertain whether or not the property converted was included in the $215,000 or not. They simply went on the ground and took everything and it did not matter to them whose property it was. The equities of Jones and Kribs are entirely imaginary as against the creditors and amounts to mere buncombe. The creditors who sold the personal property to Dodge, who was the agent of Jones and Kribs, from an equitable point

of view, certainly stand in a better position than these defendants, who roped Dodge into their bonding scheme in order to enrich themselves.

With respect to the burden of proof we have sustained our burden of proof and proved beyond any question that none of the $215,000 ever purchased one particle of the property we are suing for. As a matter of fact, there is no evidence to the contrary in this record. Defendants say the logging trucks were of course a part of the railroad equipment, but what of it? Are we to go to the Circuit Court of Appeals; wait several years, and then be confronted by Judge Corliss' statement that this case is not now to be tried by the rule laid down by the Circuit Court of Appeals. The Circuit Court of Appeals did not give to the defendants any logging equipment, or any railroad equipment or any other equipment. The only thing that the Circuit Court of Appeals gave to the defendants was any property purchased out of the $215,000. This constant ignoring of the express decision of the Circuit Court of Appeals should not bespeak any particular favor in behalf of the defendants. The property included in the forfeiture clause is limited to the property purchased with the $215,000 because the Circuit Court of Appeals has held that that was the only property included in the contract.

Obviously, if there was any doubt as to the property taken over by the defendants, they would have introduced some evidence to show that it was not taken over, and if there was any contest as to the

value of the property taken over, the defendants would have produced some evidence contradicting the values set on the property by the plaintiff; so that the accounting comes before the Honorable Judge of the Circuit Court of Appeals in this case on the evidence produced by the plaintiff as to the property and the values and with no evidence produced by the defendants whatsoever on this issue.

Witnesses are presumed to speak the truth and the plaintiff's witnesses testifying as to the conversion of the property and its value were in no way discredited, and the testimony of the plaintiff's witnesses as to the conversion and the values is in no way improbable. From these circumstances it would seem that the testimony comes within the rule that such evidence legally establishes the fact.

In Newton v. Pope, 1 Cow. (N. Y.) 109, the Court said:

> *"Where the witness is unimpeached, the facts sworn to by him uncontradicted, either directly or indirectly by other witnesses, and there is no intrinsic improbability in the relation given by him, neither a court nor a jury can in the exercise of a sound direction disregard his testimony." Enc. of Ev., Vol.* 14, *page* 22.

The burden of proof was on the plaintiff in this case to show the property converted and its nature and the amount and value thereof. The plea that any part of this property was paid for out of the

$215,000 would amount to a plea by way of confession and avoidance, and the burden upon that issue would be upon the defendants. (See Smith v. Hill, 232 Mass. 188; 2 Am. Law Rep. 1667.) But we have voluntarily in this case assumed both burdens. We not only proved the property taken over and its value, but we also negatively proved that none of this property was paid for out of the $215,000 and all our testimony in this regard stands uncontradicted.

All the defendants could take in any event under the forfeiture clause was the property included in the contract and purchased with the $215,000. They had no rights in any other personal property on the ground, and we therefore respectfully submit to the Honorable Federal Court that we are entitled to the value of all the personal property converted on the 12th of May, 1914, which was not included in the contract and which was not paid for out of the $215,000.

Respectfully submitted,

THOMAS MANNIX,
GUY L. WALLACE,
Attorneys for Plaintiff.

Portland, Ore., October 6, 1921.